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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,951	02/10/2006	Munetoshi Kawamura	375462-000001	7498
3713	7590	07/21/2011	EXAMINER	
DLA PIPER LLP US 1999 Avenue of the Stars Suite 400 LOS ANGELES, CA 90067			ANDERSON, JERRY W	
			ART UNIT	PAPER NUMBER
			1781	
			NOTIFICATION DATE	DELIVERY MODE
			07/21/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/567,951	<b>Applicant(s)</b> KAWAMURA, MUNETOSHI	
	<b>Examiner</b> Jerry W. Anderson	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-11 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) 5-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/21/11</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.
2. Applicant's submission filed on 06/21/2011 has been entered. Claims 17-22 are amended, claims 1-4, & 12-16 are cancelled, claims 5-11 are withdrawn, and claims 5-11 & 17-22 pending.

### **Information Disclosure Statement**

3. The information disclosure statement filed 06/21/11 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.
4. Reference JP 2002-100493 concerns an electrodeless discharge lamp does not seem to be related to the claimed invention, which is a food preservation system.

5. Reference WO 98/41115 is a 151-page WIPO patent application publication, in Japanese, with a one paragraph English abstract. Examiner submits that the English abstract does not encapsulate the entirety of the WIPO disclosure, and thus cannot certify that the reference has been considered in its totality.

### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 17-22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawa, K., (JP 62-297677) in view of Ito, A. (JP-2002 -034531)**

9. **Regarding claims 17, 18, 19, 29, 21, and 22**, Ogawa discloses the claimed invention including a shelf in a refrigerator and the shelf is used as the electrode, (¶ 1, pg. 5, claim 2, '677) having a food on the shelf, (¶ 1, pg. 5, '677) having a heat pump to cool the refrigerator/freezer, (¶ 2, pg. 3, '677) applying an AC and DC voltage simultaneously to the food, (¶ 1, pg. 4, claim 5, '677) wherein the DC voltage is negative, (¶ 1, pg. 5, '677) further, the voltages can be applied for a set duration of time by the use of a timer, such that the voltages can be turned off after a set time following the closing of the freezer door. (¶2, pg 5, '677) Ogawa discloses the use of the invention on fruits, vegetables, and grains. (¶1&2, pg 5, ¶2, pg 7, '677)

10. Ogawa is silent as to placing the food on the shelf, simply stating that shelf holds food, and cooling the interior of the refrigerator, however one of ordinary skill in the art at the time of the invention would have found it obvious to place the food on the food shelves of Ogawa's refrigerator, to use the heat pump mechanism of the refrigerator/freezer to cool or freeze the food, and to use the disclosed device as intended.

11. Ogawa lacks the use of DC voltages that are greater, in a negative sense than -180 V, and AC voltages that are between 180 V to 3500 V, and temperatures of about -20°C.

12. Ito discloses the freezing of fish or meat, (¶ 14, '531) in an electric field, and the use of DC voltages of -200 to -3000 V and AC voltages of 150 V and 800 V and a current of 1 mA or less, (¶ 33, 42, '531) temperatures used ranged from +10 °C to -40°C.

(Drawing 21, '531) Ito teaches applying DC voltages and AC voltages separately, and

Art Unit: 1781

sequentially, and the application of the selected voltages can be controlled by a timer.

(drawing 13, ¶24, 25, '531)

13. As shown in drawing 20, the electrode plate (element 82) was set in the freezer, (element 80) the voltage generator (element 81) was connected to this electrode plate (element 82), and the processed material (element F) was laid on the electrode plate, (drawing 20, ¶32, '531), the voltage was applied to the processed material, pork.

(element F) (drawing 20, ¶ 33, '531)

14. It would have been obvious to one of ordinary skill in the art that stating that the voltage was applied to the processed material means that the food was in electrical connection with the electrode plate.

15. Both Ito and Ogawa are engaged in exploring the effect of electrical fields upon the preservation of food by freezing.

16. It would have been obvious to incorporate the temperature ranges of Ito and the voltage ranges of Ito into the process of Ogawa, with a reasonable expectation of success, since the changes would involve minor changes as to the temperature used and the ranges of voltages.

17. As to the process changing the voltages and cooling phases listed in claims 17-22, this consists of applying the specified voltages, disclosed by Ito, and the use of the timer of Ogawa, disclosed above, such that the AC and DC voltages are applied, then turned off and the cooling continued. Ito teaches applying DC voltages and AC voltages

Art Unit: 1781

separately, and sequentially, and the application of the selected voltages can be controlled by a timer. (drawing 13, ¶24, 25, '531) Thus disclosing the two phases of the instant application.

18. As to the amendment of claims 21 and 22, specifying the use of the procedure on agar jelly, the applicant has not established the criticality of the claimed element.

Applicant has stated that the procedure can be applied agar jelly, meat, seafood, vegetables and fruit, confections, frozen desserts, bread, daily dishes, pickled products, drinks, liquors and food additives, and raw foods. (¶3, pg 6 to ¶1, pg 7, ¶1, pg 8, ¶3, pg 15, ¶ 2, pg 38, specification)

19. (Claimed elastomeric polyurethanes which fell within the broad scope of the references were held to be unpatentable thereover because, among other reasons, there was no evidence of the criticality of the claimed ranges of molecular weight or molar proportions.). For more recent cases applying this principle, see *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989); *In re Kulling*, 897 F.2d 1147, 14 USPQ2d 1056 (Fed. Cir. 1990); and *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

20. Further, one of ordinary skill in the art would have found it obvious that agar jelly falls under the broad classification of food, and both Ito and Ogawa teach the application of their methods to food or foodstuff. (¶ 1, '531) (¶ 1, pg 3, '667)

### **Response to Amendment**

21. The applicant having amended claims 17-22, the 35 USC § 112 2nd rejections and claim objections thereunto are withdrawn

### **Response to Arguments**

22. Applicant's arguments filed 06/21/11 have been fully considered but they are not persuasive.

23. The applicant states that Ogawa does not disclose imposing both AC and DC voltages. (¶ 2, pg 9, remarks) However, Ogawa claims DC with superimposed AC voltage. (¶ 1, pg. 4, claim 5, '677)

24. The applicant states that neither Ogawa nor Ito teach that the foodstuff is in electrical contact with the tray, and that Ito teaches a vinyl chloride coating on the metal shelves 7.

25. To reply, the applicant has not provided a citation for the vinyl chloride coating on the metal shelves 7. The examiner was unable to find said teaching in either Ito or Ogawa, as used in the previous office action. EP 0 968 662, also by Ito, Fig. 1 does have elements 7 and 8, and shelf 7 is covered with vinyl chloride. However, said reference



was not used in the last or the instant office action, and therefore is not germane to the instant office action.

26. As to the foodstuff being in electrical contact, Ogawa states that the metal shelves are used as electrodes, (¶ 1, pg. 5, claim 2, '677) and having a food on the shelf, (¶ 1, pg. 5, '677) and Ito states that the electrode plate was placed in the freezer, the voltage generated attached to the electrode plate and the processed material (pork) is laid on the electrode plate, the voltage is 2-3 kV, and the current is 1 mA or less. (¶ 32, '531)

27. Further, the prior art is applying the voltage to the tray in the refrigerator/freezer, the food is on the tray, and thus the voltage is applied to the food.

28. It would have been obvious to one of ordinary skill in the art that applying an electrical potential to a tray which contains a food item, that the food item will then have the electrical potential impressed upon it. The electrical field will necessary accompany the electrical potential.

29. However, it would have been obvious to one of ordinary skill in the art that an electrical potential creates an electrical field. They are inextricably linked, and one cannot exist without the other.

30. The applicant states that neither Ogawa nor Ito teach the two phased cooling a preserving steps claimed.

31. Said argument has been addressed in the 103 rejection above.

32. The 103 rejection based upon Ogawa and Ito stands.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/  
Supervisory Patent Examiner, Art Unit 1781

/Jerry W. Anderson/  
Examiner, Art Unit 1781